

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.11.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL Nos.1310 to 1312 of 2000

1. The State of Tamil Nadu rep.
by the Special Commissioner
and Secretary to Government
Prohibition and Excise Department
Chennai 9.

2. The Commissioner of Prohibition
and Excise, Chepauk,
Chennai 5.

3. The Collector
Chengalpattu District
at Kancheepuram.

.. Appellants in
all the WAs.

M. Gandhi

सत्यमेव जयते

.. Respondent in
WA.1310/2000

R. Srinivasan

.. Respondent in
WA.1311/2000

T. Ekambaram

.. Respondent in
WA.1312/2000

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Writ Appeals filed under Clause 15 of the Letters Patent against the common order of the learned Judge Mr. Justice K. Gnanaprakasam dated 03.04.1998 made in W.P.Nos.1715 to 1717 of 1989 calling for the records relating to the impugned order of the 1st respondent herein passed in G.O.Ms.No.92, Prohibition and Excise Department, dated 12.1.1989 and the connected appellate order of the 2nd respondent in R.C.No.37785/85 Q (2) dated 7.10.1985 and the initial order of the 3rd respondent in R.C.No.97177/84.VI dated 03.11.1985 and to quash the order of the 1st respondent herein in G.O.Ms.No.92 prohibition and Excise Department, dated 12.1.1989 and

the said connected appeal order dated 7.10.1985 and the said initial order of the 3rd respondent dated 3.5.1985 and direct the respondents herein to refund to the petitioner the Earnest Money deposit, advance kist and other amounts paid by the Petitioner. (W.P.No.1715 of 1989)

calling for the records relating to the impugned order of the 1st respondent herein in G.O.Ms.No.1619, Prohibition and Excise dated 20.10.87 and the connected appellate order of the 2nd respondent herein dated 4.2.1986 in D.Dis(Q) 47980/85 and the initial order of the 3rd respondent in R.C.97158/84.VI order dated 3.5.1985 and quash the order of the 1st respondent herein in G.O.Ms.No.1619 prohibition and Excise Department, dated 20.10.1987 and the connected order of the 2nd respondent dated 4.2.1986 and the initial order of the 3rd respondent dated 3.5.1985 and directing the respondent, herein to refund to the petitioner herein the Earnest Money Deposit, advance kist and other amounts paid by the Petitioner (W.P.No.1716 of 1989)

calling for the records relating to the impugned order of the 1st respondent herein dated 20.10.1987 and passed in G.O.Ms.No.1618 prohibition and excise Department, and the connected appellate order of the 2nd respondent herein dated 4.2.1986 in D.Dis.Q.2/56991/85 and the initial order of the 3rd respondent herein, dated 3.5.1985 and made in Rc.No.114704/B4-VI and quash the order of the 1st respondent in G.O.Ms.No.1618, Prohibition and Excise Department dated 20.10.1987 and connected appellate order dated 4.2.1986 and the initial order dated 3.5.1985 of the 3rd respondent herein and direct the respondents herein to refund to the petitioner of the Earnest money Deposit. Advance kist and other money paid by the Petitioner. (W.P.No.1717 of 1989)

For appellants .. Mr. P. Subramanian
Government Advocate

For respondent .. Mr. P. Chandrasekaran
in all WAs.

COMMON JUDGMENT

(Judgment of the Court was delivered by
P. Sathasivam, J.)

The above writ appeals are directed against the common order of the learned Judge dated 03.04.1998 made in W.P.Nos.1715, 1716 and 1717 of 1989, in and by which the learned Judge, after accepting the case of the petitioners, directed the respondents therein to refund the Earnest Money Deposit (EMD) and advance amount to the petitioners.

2. For convenience, we shall refer the parties as arrayed in the writ petitions.

<https://hcservices.ecourts.gov.in/hcservices/> case of the petitioner in WP.No.1715 of 1989 is briefly stated hereunder:

For the Excise year 1984-85 (from 16.07.1984 to 15.07.1985), he was the auction purchaser in respect of arrack shop AS.No.4/84-85 Thiruvottiyur Municipality in Saidapet Taluk. The sale was confirmed on 09.07.1984 in the name of the petitioner for the highest bid amount of Rs.1,06,000/-. The petitioner submitted an application in Form II for grant of licence on 12.07.1984 i.e., within the prescribed time limit. In spite of repeated requests, he was not given licence to enable him to run the shop. On 09.11.1984, he received a communication from the Collector, Chengalpattu stating that the shop would be reaucted since he did not pay 2 ½ months kist as advance within 7 days from the date of sale. The petitioner brought to notice of the respondents that he remitted 2 ½ months kist amount even on 22.06.1984. Finally on 25.12.1984, realising the mistake the third respondent cancelled the proceedings for resale. Though the petitioner selected an unobjectionable site, the same was not duly considered by the authority concerned. By representation dated 23.02.1985, he informed the third respondent that since major period of seven months had already lapsed and he could not get licence during all those months, it would be difficult for him to secure an alternate site, and accordingly requested the third respondent to move the Government for deletion of the shop from the sale notification. The petitioner also prayed for refund of the deposit made by him. The petitioner again reminded the third respondent on 06.03.1985 and 11.03.1985. However, the third respondent rejected the request of the petitioner on 03.05.1985 and ordered resale of the shop AS.4/84-85. Questioning the same, the petitioner has filed the writ petition before this Court. Similar averments have been made in other two writ petitions.

4. On behalf of the respondents, first respondent has filed separate counter affidavit disputing various averments made by the respective petitioners. It is stated that because the petitioners were not able to select unobjectionable sites within the notified area, the delay occurred and as per the Tamil Nadu Toddy & Arrack Shops (Disposal in Auction) Rules, they must be held responsible for the resale ordered by the Collector. It is also stated that there is no valid reason for deletion of the shops from the sale notification.

5. By common order dated 03.04.1998, the learned single Judge, after referring the Division Bench decision of this Court dated 04.03.1991 in W.A.Nos.1251 to 1255 of 1988 and also taking note of the fact that the Government acceded to the request of one Ravi, who was similarly placed and deleted his shop from the sale notification, allowed the writ petitions and granted the relief as claimed. Aggrieved by the said order, the above appeals have been filed.

6. Learned Government Advocate appearing for the appellants/respondents reiterated the same stand taken before the learned single Judge. On the other hand, learned counsel appearing for the respondents / writ petitioners by placing before us the relevant facts and figures, demonstrated that all the three, on payment of 2-
<https://hcservices.ecourts.gov.in/hcservices/>, selected unobjectionable sites and located their respective arrack shops. It is also submitted that it was the

officials, particularly third respondent who refused to accept the sites every time stating that the sites were objectionable ones. As a matter of fact, the particulars furnished show that the third respondent had taken more than five months for returning the applications of the petitioners due to which they were prevented from getting licence. It is also demonstrated before us that since substantial period of the excise year had elapsed in the process of accepting the sites for arrack shops and finding that it would not be economical and they could not run the shop after expiry of considerable period, the petitioners made representations to the Collector for deletion of their shops from the sale notification. The learned Government Advocate pointed out that every time they selected objectionable sites, due to which the third respondent had no other option except to reject the same.

7. We verified all those details. There is no definite information as to how the sites selected by the petitioners were treated as objectionable. In fact, it is the main grievance of the writ petitioners that it was the third respondent who had taken long time for rejection of their applications on the ground that the sites selected by them were objectionable. In those circumstances, we are of the view that the petitioners who took arrack shops in auction for one year period cannot be blamed and they cannot be forced to run the shops for the remaining short period. In the facts and circumstances, we are of the view that the petitioners are fully justified in asking the Collector to delete their shops by getting orders from the Government, and considering the grievance of the petitioners, the respondents ought to have accepted their request.

8. It is seen from the order of the learned Judge that in the case of one Ravi, who was similarly placed, the Special Commissioner and Secretary to Government, Prohibition and Excise passed an order on 07.04.1986, accepting his case and ordered refund of a sum of Rs.1,96,910/- excluding the EMD of Rs.2,000/-. It has been specifically referred to and relied on by the Division Bench in its order dated 04.03.1991 in W.A.Nos.1251 to 1255 of 1988. The learned Judge applying the decision of the Division Bench in the above referred case to the facts of the case, issued direction for refund of the deposited amount. In the light of the factual information and of the fact that the petitioners were not in a position to run the arrack shops for want of licence and taking note of the fact that the Government itself granted relief in favour a similarly placed person, we are in entire agreement with the conclusion arrived at by the learned Judge.

Under these circumstances, the writ appeals fail and the same are dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

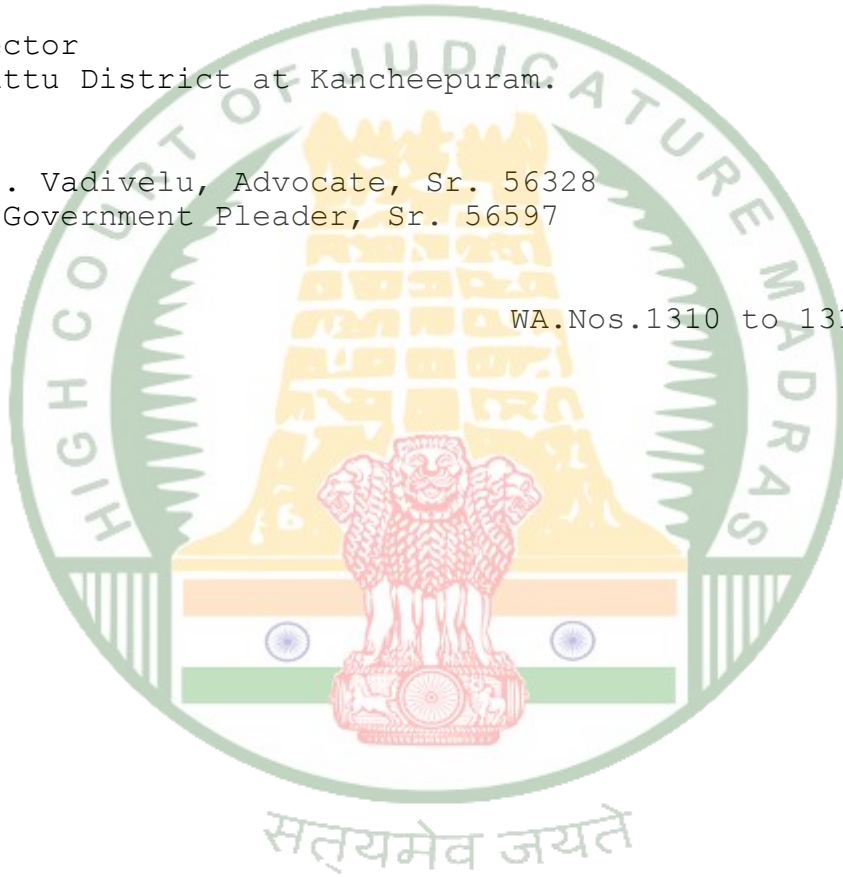
To

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Chennai 9.
2. The Commissioner of Prohibition
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3. The Collector
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1 cc to Mr.S. Vadivelu, Advocate, Sr. 56328
1 cc to the Government Pleader, Sr. 56597

WA.Nos.1310 to 1312/2000.

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